



## **Fast Track Merger**

Companies Act, 1956 did not provide a simple procedure for mergers and amalgamations of certain type of companies. It prescribed a cumbersome and time-consuming process for all companies irrespective of their size, net worth and turnover. The legal provisions pertaining to merger process were stipulated in sections 391-394 of the Companies Act, 1956. This procedure was perceived to be very confusing, complex and time-taking by all stakeholders involved in the process. The process involved, inter alia, drafting a merger scheme, taking judicial approval for the scheme, getting Board and shareholders authorisation, etc. It defeated the very purpose for which mergers were entered into and proved to be a deterrent for companies looking for collaborations, rather than a facilitator.

Small companies with fewer resources were also subject to same complex procedure. This was proving to be an obstacle in the way of their growth and expansion. Having the same procedure for merger for all companies was proving to be counter-productive. The complexities of the earlier regime gave rise to the need for a simplified procedure and a more efficient legal regime for merger process.

This need was embedded in the following benefits which a fast track merger offered under Section 233 of the Companies Act, 2013:

- Simplified procedure for merger
- No judicial approval required
- Separate procedures for certain type of companies would enable them to expand without any roadblocks
- Form filings required also significantly reduced
- No requirement to apply to the National Company Law Tribunal
- No requirement to get a special audit conducted for the transferor company
- No requirement to issue public advertisements announcing the merger
- Less cost intensive and less time consuming



The Companies Act, 2013 replaced the earlier tedious process with a new concept called the 'fast track mergers'. Fast track mergers have dispensed with Tribunal approval for mergers. However, it is to be noted that this process is applicable only to merger between small companies and holding and subsidiary companies.

## **Legal Regime behind Fast Track Mergers**

Section 233 of the Companies Act, 2013 along with Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 lay down the entire legal framework of fast track mergers.

## **MERGER OR AMALGAMATION OF CERTAIN COMPANIES – SECTION 233**

1. Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely: —

- a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within **thirty days** is issued by the transferor company or companies and the transferee company;
- b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;
- c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and
- d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty- one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

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2. The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.

3. On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.

4. If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of **thirty day**;

Provided that if no such communication is made, it shall be presumed that he has no objection to the scheme.

5. If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of sixty days of the receipt of the scheme under subsection (2) stating its objections and requesting that the Tribunal may consider the scheme under section 232.

6. On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit: Provided that if the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme.

7. A copy of the order under sub-section (6) confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.

8. The registration of the scheme under sub-section (3) or sub-section (7) shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.



9. The registration of the scheme shall have the following effects, namely: —

a) transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company

b) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;

c) legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and (d) where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

10. A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.

11. The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fees due on revised capital: Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation.

12. The provisions of this section shall mutatis mutandis apply to a company or companies specified in subsection (1) in respect of a scheme of compromise or arrangement referred to in section 230 or division or transfer of a company referred to clause (b) of subsection (1) of section 232.

13. The Central Government may provide for the merger or amalgamation of companies in such manner as may be prescribed.

14. A company covered under this section may use the provisions of section 232 for the approval of any scheme for merger or amalgamation”

## **RULE 25 OF THE COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS)**

### **RULES, 2016:**

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1. The notice in the Form CAA 9 of the proposed scheme to invite objections or suggestions from the Registrar and Official Liquidator or persons affected by the scheme

The notice of the meeting to the members and creditors shall be accompanied by –

(a) a statement disclosing the details of the compromise or arrangement;

(b) the declaration of solvency in Form No. CAA.10;

(c) a copy of the scheme

2. The declaration of solvency in the Form CAA 10 shall be filed by each of the companies along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, before convening the meeting of members and creditors for approval of the scheme.

3. The transferee company shall, within seven days after the conclusion of the meeting of members or class of members or creditors or class of creditors, file a copy of the scheme as agreed to by the members and creditors, along with a report of the result of each of the meetings with the Central Government, along with the fees as provided under the Companies (Registration Offices and Fees) Rules, 2014.

Copy of the scheme shall also be filed, along with Form No. CAA. 11 with –

(i) the Registrar of Companies in Form No. GNL-1 along with fees provided under the Companies (Registration Offices and Fees) Rules, 2014; and

(ii) the Official Liquidator through hand delivery or by registered post or speed post.

4. Where no objection or suggestion is received to the scheme from the Registrar of Companies and Official Liquidator or where the objection or suggestion of Registrar and Official Liquidator is deemed to be not sustainable and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, the Central Government shall issue a confirmation order in the Form CAA 12 of such scheme of merger or amalgamation.



5. Where objections or suggestions are received from the Registrar of Companies or Official Liquidator and the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in the interest of creditors, it may file an application in the Form CAA.13 before the Tribunal within sixty days of the receipt of the scheme stating its objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act.

5. The confirmation order of the scheme issued by the Central Government or Tribunal under sub-section (7) of section 233 of the Act, shall be filed in the Form INC-28 within thirty days of the receipt of the order of confirmation along with the fees as provided under Companies (Registration Offices and Fees) Rules, 2014 with the Registrar of Companies having jurisdiction over the transferee and transferor companies respectively.

6. For the purpose of this rule, it is clarified that with respect to schemes of arrangement or compromise falling within the purview of section 233 of the Act, the concerned companies may, at their discretion, opt to undertake such schemes under sections 230 to 232 of the Act, including where the condition prescribed in clause (d) of sub-section (1) of section 233 of the Act has not been met.

### **Steps involved in Fast Track Mergers:**

The following steps need to be followed in a fast track merger:

1. First of all, both the companies need to check their Articles of Association (AOA) and assess if they have the requisite authority under them to enter into a merger. If no, then the AOA need to be amended before such merger can take place.
2. Convene the Board Meeting and prepare a draft scheme of merger or amalgamation.
3. Prepare a financial statement of assets and liabilities and get an auditor's report prepared.
4. Get the draft scheme approved in the Board Meeting.
5. Both the companies need to send a notice to the Registrar of Companies (ROC) and Official Liquidator (OL) of their respective regions inviting suggestions/objections to the scheme, if any within 30 days of issuing the notice.

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6. Such notice to the ROC should be in Form CAA 9 and have the following attachments:

- Copy of the scheme
- Shareholding pattern of the transferee pre and post-merger
- Last 3 years audited financial statements
- Memorandum and Articles of Association
- Board Resolution
- Valuation Report

7. Both the companies are required to file a declaration of solvency with their respective ROCs. This declaration of solvency shall be accompanied by the following:

- Board Resolution
- Statement of Assets and Liabilities
- Auditors Report

8. Sending notice of shareholders' meeting and creditors' meeting.

9. Conducting the shareholders' meeting and getting the scheme approved.

10. Conducting creditors' meeting and getting the scheme approved.

11. Filing of the results of each meeting with the Regional Director and the Official Liquidator by the transferee company.

12. Objections/Suggestions to be sent to the Regional Director by the ROC / Official Liquidator.

13. Regional director may file an application with the Tribunal if he is of the opinion that the scheme is against public interest.

14. The Tribunal can approve or disapprove the scheme.

15. If approved it shall be filed with the ROC of the transferee company and the transferor company respectively.



## **POST-MERGER EFFECT**

The following consequences shall result out of the merger:

- The transferor company shall stand dissolved on the registration scheme.
- No winding-up shall be required for the same.
- All the assets and liabilities of the transferor company shall be transferred to the transferee company.
- Any charge on the transferor's property shall stand transferred to the transferee.